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No. 87-1525

IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

PACIFIC FRUIT EXPRESS AND UNION PACIFIC FRUIT EXPRESS, JOINT PROTECTIVE BOARD, BROTHERHOOD RAILWAY CARMEN DIVISION, TRANSPORTATION COMMUNICATIONS INTERNATIONAL UNION,
Petitioner,

v.

UNION PACIFIC FRUIT EXPRESS COMPANY, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Railway Labor Act, 45 U.S.C. §§ 151 *et seq.*, affords railroads, airlines, and their unions the right to bring actions in federal court for the sole purpose of obtaining discovery for use in labor disputes within the mandatory and exclusive jurisdiction of railroad and airline arbitration boards.

LIST OF PARTIES

The petition for certiorari in this case properly lists all parties. Pet. 1-2. The statement required by Supreme Court Rule 28.1 listing subsidiaries and affiliates of the respondents is contained in the Appendix to this opposition.

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RESPONDENTS' BRIEF IN OPPOSITION

Respondents Union Pacific Fruit Express Company, *et al.*, submit this brief in opposition to the petition for writ of certiorari.

PRELIMINARY STATEMENT

Pursuant to Section 3 of the Railway Labor Act ("RLA"), 45 U.S.C. § 153, disputes between railroads or airlines[1] and their unions over the interpretation or ap-

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[1] The Railway Labor Act's coverage extends to the airline industry under 45 U.S.C. §§ 181-88. See generally *International Ass'n of Machinists* v. *Central Airlines, Inc.*, 372 U.S. 682 (1963).

plication of collective bargaining agreements are called "minor" disputes and are subject to the "mandatory, exclusive, and comprehensive system" of arbitration procedures established by the RLA. *Brotherhood of Locomotive Engineers* v. *Louisville & Nashville R. Co.*, 373 U.S. 33, 38 (1963). The petitioner (hereinafter the "Union") contends here that the RLA affords the parties to any minor dispute the right to bring an action in the federal courts for the sole purpose of using the Federal Rules of Civil Procedure to obtain discovery for use in the subsequent arbitration proceeding. A unanimous panel of the Ninth Circuit rejected the Union's argument by concluding "that the kind of court-ordered discovery sought in this case is incompatible with the aims and structure of the [RLA]." A. 13.[2] The Union's petition for rehearing *en banc* was unanimously denied. A. 14.

The decision below accords with every other decision on this question. This Court itself, approving various lower court decisions, has expressly held that "when the purpose of a discovery request is to gather information for use in proceedings other than the pending suit, discovery properly is denied." *Oppenheimer Fund, Inc.* v. *Sanders*, 437 U.S. 340, 353 n.17 (1978) (citing other cases). Moreover, in the only two prior cases presenting this question under the RLA—each filed by the petitioner Union, represented by the same counsel—the courts unanimously and summarily rejected the Union's attempt to obtain "court-ordered discovery" for use in railway labor arbitrations. See *Brotherhood of Railway Carmen* v. *Pacific Fruit Express Co.*, 651 F.2d 651 (9th Cir. 1981); *Burlington Northern Joint Protective Board* v. *Burlington Northern R. Co.*, 822 F.2d 810 (8th Cir. 1987). Indeed, just two months ago, this Court denied certiorari in the Eighth Circuit's *Burlington Northern*

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[2] "A. —" refers to the appendix to the petition for certiorari in this case.

Joint Protective Board case, in which the Union and its counsel filed a petition for certiorari that is virtually identical to the petition at issue here. No. 87-1177; see 108 S. Ct. 1111 (March 7, 1988).

Not only is there no merit to petitioner's claims, and no conflict among the courts, but the question itself is self-evidently unworthy of review. This is shown by the simple fact that in the 54 years in which railroad and airline arbitrations have been taking place under the Act, this is only the third case where such discovery was sought in the federal courts—and that, moreover, each of those cases was brought by the same union, represented by the same counsel, and was summarily and unanimously rejected by the courts.

COUNTER-STATEMENT OF THE CASE

The Union's "Statement of the Case" is accurate only insofar as it quotes from the decision below. Pet. 4-5. As the court of appeals said, the facts are that: (1) the underlying dispute concerns furloughs of certain railway carmen at the UPFE's Nampa facility; (2) the Union's claim is that these furloughs constitute an abandonment of the facility, thereby triggering certain labor protections for the furloughed carmen under a 1964 National Mediation Agreement (hereinafter the "1964 Agreement"); (3) the respondents' defense is that the labor protections are inapplicable here because the furloughs were caused by a decline in business, which does not trigger the labor protections; and (4) the parties agree that the dispute over the lawfulness of the furloughs under the 1964 Agreement is a "minor" dispute that is subject to the mandatory and exclusive jurisdiction of a railroad adjustment board and that "cannot be litigated in court." A. 8-9 (citations omitted).

Although the Union's Statement purports to "expand" on the facts set out in the decision below—through unsupported assertions—its Statement actually omits the

additional undisputed evidence adduced below. For example, the Union fails to mention the uncontradicted evidence below concerning the unprecedented nature of its discovery request. Although the Union and the UPFE (or its predecessor) have been operating under the 1964 Agreement for almost 25 years, the Union in the over 400 other grievances between the parties has made a comparable demand for confidential information only once, and in that case, as explained below, the Ninth Circuit summarily rejected the availability of pre-arbitration discovery. (Ex. 67, 74, 91; D.R. 67, 74, 91); see pp. 6-7 *infra*.[3] The Union also fails to note that the 1964 Agreement at issue here has a nationwide scope, affecting 71 railroads and six shop craft unions, and that, under the consistent industry-wide practice, the type of detailed proprietary information sought here by the Union is neither demanded by unions nor furnished by carriers, either in connection with grievances under the 1964 Agreement or otherwise. (Ex. 68, 74, 91-92; D.R. 68, 74, 91-92.)

The Union also does not inform the Court that procedures for handling minor disputes are set forth in the RLA and do not provide for pre-arbitration discovery. 45 U.S.C. §§ 153 First (i)-(k), 153 Second. Nor does it acknowledge that RLA procedures may be modified by agreement of any railroad or airline and its unions through collective bargaining. See 45 U.S.C. § 152 Sixth; pp. 13-14 *infra*. Indeed, the railroad and union signatories to the 1964 Agreement *did* agree therein to add certain procedures not specified in the RLA, including an obligation on the railroads to disclose to the unions certain kinds of data.[4]

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[3] "Ex. —" refers to the Union's excerpts in the court below and "D.R. —" refers to the designated record below.

[4] For example, as the Union conceded below, Section 4 of the Article I of the 1964 national agreement expressly provides that where employees are furloughed under specified circumstances the railroad

In this regard, and even more importantly, the Union does not explain that the general procedures added by the parties in the 1964 Agreement, although not requiring formal discovery in this case, have the indirect effect of requiring the railroad to furnish relevant evidence. In particular, Section 11 of Article VI limits the railroad's presentation to the adjustment board to evidence previously presented to the union during pre-arbitration conferences. (Ex. 22; D.R. 22.) Moreover, Section 3 of Article I shifts the burden of proof concerning job protection from the union challenging the railroad's action, where the burden normally would lie, to the railroad itself. (Ex. 9; D.R. 9.) Taken together, these provisions require a railroad, if it is to meet its evidentiary burden under the 1964 Agreement, to produce relevant information prior to arbitration.

Finally, the Union also fails to tell this Court that, pursuant to the provisions just discussed, the UPFE *did* provide the Union with a substantial amount of information which confirmed that the employees were not entitled to protective benefits. (Ex. 92, 124-28; D.R. 92, 124-28.) Specifically, the UPFE provided the Union with detailed information concerning quarterly car loadings, car mileage, car repairs, the reasons for the Nampa furloughs, and the business plans of the UPFE concerning future repair operations. *Id.* Accordingly, the specter raised by the Union of an employer obstinately refusing to provide relevant information is simply inapplicable here.

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must provide "a *full disclosure of all facts and circumstances* bearing on the proposed discontinuance of positions." (Ex. 9; D.R. 9) (emphasis added). Similarly, Section 2 of Article II provides that "[i]f the carrier decides that * * * it is necessary to subcontract work of a type currently performed by the employes, it shall give the general chairman of the craft or crafts involved notice of intent to contract out and the reasons therefor, *together with supporting data*." (Ex. 17; D.R. 17) (emphasis added).

REASONS FOR DENYING THE PETITION

1. There is not a single case in conflict with the decision below.

The decision below accords with the well-settled general rule that parties to an arbitration are not entitled to seek discovery for that arbitration in the federal courts. See, *e.g.*, *Corcoran* v. *Shearson/American Express Inc.*, 596 F. Supp. 1113, 1117-18 (N.D. Ga. 1984); *Levin* v. *Ripple Twist Mills, Inc.*, 416 F. Supp. 876, 880-81 (E.D. Pa. 1976), *appeal dismissed*, 549 F.2d 795 (3d Cir. 1977); *Mississippi Power Co. v. Peabody Coal Co.*, 69 F.R.D. 558, 565-67 (S.D. Miss. 1976). The courts have reasoned that discovery runs counter to the underlying purposes of arbitration. See, *e.g.*, *Burton* v. *Bush*, 614 F.2d 389, 391 (4th Cir. 1980) ("such limitations [on discovery] are in keeping with the policy underpinnings of arbitration—speed, efficiency, and the reduction of litigation expenses"). Indeed, relying on decisions like these, this Court expressly held in *Oppenheimer Fund, Inc.* v. *Sanders, supra*, 437 U.S. at 353 n.17, that "when the purpose of a discovery request is to gather information for use in proceedings other than the pending suit, discovery properly is denied."

As noted above, the specific question whether parties before a *railroad* adjustment board have a right to obtain discovery in the federal courts for use in the subsequent arbitration has heretofore only been raised on two prior occasions in the fifty-plus years since the passage of the RLA. On both occasions, each of which arose in the past several years, the issue was raised by the petitioner Union, represented by its counsel in this case, and in both instances its claim for pre-arbitration discovery was unanimously and summarily rejected by the courts. *Brotherhood of Railway Carmen* v. *Pacific Fruit Express Co.*, 651 F.2d 651 (9th Cir. 1981); *Burlington Northern Joint Protective Board* v. *Burlington Northern R. Co.*,

822 F.2d 810 (8th Cir. 1987), *cert. denied*, 108 S. Ct. 1111 (March 7, 1988).

The Ninth Circuit's decision in *Pacific Fruit Express* involved not only the same union and the same union counsel, but also the predecessor of the same carrier and the same labor agreement that are involved in this case. There the Company decided to close a repair facility and transfer the employees to other company facilities. 651 F.2d at 652. The Carmen's local filed suit, charging that the labor agreement had been violated. It sought both an injunction against the transfer and discovery for use in processing its grievance. The defendants argued that the case presented a minor dispute and hence that the entire case had to be resolved by a railroad arbitration board. The district court agreed and dismissed the case in its entirety. *Id.*

On appeal, the Ninth Circuit first rejected the Union's argument that the case involved a "major" rather than a minor dispute. 651 F.2d at 652. The Court then turned to the Union's second, separate argument that the district court's dismissal had "denied them an opportunity for discovery." *Id.* at 653. The Ninth Circuit specifically rejected the Union's argument that it was entitled to discovery and instead affirmed the district court's decision "to leave the resolution of the dispute to the mediation procedures agreed to by the parties in their [1964 Agreement]." *Id.*

The facts of the Eighth Circuit's decision in *Burlington Northern Joint Protective Board, supra*, are equally close if not closer to those in this case. In that case, another committee of the Union, again represented by the same counsel, sought an injunction against the abolition of various carmen positions on the theory that the Burlington Northern was violating the ICC's so-called *New York Dock* labor protective conditions. See generally *New York Dock Railway-Control-Brooklyn Eastern*

District, 360 I.C.C. 60 (1979). At the same time, the Union brought a separate count seeking discovery from the Burlington Northern concerning furloughs of 67 Burlington Northern carmen. The district court held, first, that the dispute over the *New York Dock* conditions had to be submitted to arbitration rather than being pursued in the courts. See 822 F.2d at 811-12. The district court then went on to dismiss the union's request for pre-arbitration discovery, relying on this Court's decision in *Oppenheimer*, *supra*, to support its conclusion that it had no authority to compel discovery with respect to a factual dispute over which it lacked jurisdiction. *Id.* at 812. On appeal, the Eighth Circuit unanimously affirmed the district court in all respects. The Union's petition for rehearing and suggestion for rehearing *en banc* were also denied without a single dissenting vote. This Court, based on a certiorari petition that is virtually identical to the petition here, denied certiorari on March 7, 1988. See pp. 2-3 *supra*.

In short, the decision below represents the third case in which the Union's claimed right to use federal discovery rules for railroad arbitrations has been unanimously rejected by a court of appeals. Indeed, petitioner's theory has been rejected by every judge to examine it. Not only has the Union lost each district court decision and each court of appeals decision unanimously, but it did not get a single vote for *en banc* review from either the Eighth or Ninth Circuit.

2. Neither the language nor the legislative history of § 2 First of the RLA suggests that Congress intended to create a right to court-ordered pre-arbitration discovery.

The Union's argument that the RLA affords federal courts with jurisdiction to oversee pre-arbitration discovery rests entirely on § 2 First of the RLA. That provision, however, simply requires carriers and unions "to

exert every reasonable effort to make and maintain agreements * * * and to settle all disputes * * * in order to avoid any interruption to commerce or to the operation of any carrier * * *." 45 U.S.C. § 152 First. Even the Union does not contend that this general language discloses a congressional purpose to compel pre-arbitration discovery. Nor does the Union contend that the legislative history of § 2 First—or of any other part of the RLA—shows that Congress meant such a right to be recognized.

Instead, the union contends that in *Chicago & North Western Ry. Co.* v. *United Transportation Union*, 402 U.S. 570 (1971), this Court put a gloss on § 2 First that gives rise to a specific obligation to disclose confidential business information for use in railroad and airline labor arbitrations. But as the Ninth Circuit recognized below (A. 12), *Chicago & North Western* offers absolutely no support for the Union's position here. *Chicago & North Western* simply holds that the legal obligations created by § 2 First are judicially enforceable—a proposition with which the respondents have no quarrel. The issue presented here is not whether § 2 First is enforceable, but whether its terms disclose a congressional intent to compel pre-arbitration discovery. Nothing in *Chicago & North Western* suggests that they do. To the contrary, as the Ninth Circuit stressed in its decision below (A. 12), this Court was at pains in *Chicago & North Western* to emphasize that when construing § 2 First, "great circumspection should be used in going beyond cases involving a 'desire not to reach an agreement,' for doing so risks infringement of the strong federal labor policy against governmental interference with the substantive terms of collective-bargaining agreements." 402 U.S. at 579 n.11. Here, the Union has not alleged that the UPFE's conduct in any way reflects a "desire not to reach an agreement" concerning the furlough issue. *Chicago & North Western* thus strongly implies that in asking this Court to regulate employer conduct falling

far short of a "desire not to reach an agreement," the Union is asking for § 2 First to be given a scope that Congress did not intend it to have.

The conclusion that § 2 First was not meant, and cannot be read, to imply a right to court-ordered discovery is also reinforced by the absence of any prior case finding such a right in the 50-plus years since enactment of the RLA. As this Court said in rejecting an analogous request for an unprecedented statutory construction:

> "The presumption is powerful that such a far-reaching, dislocating construction as petitioner would now have us find in the Act * * * was not uncovered by judges, lawyers or scholars for seventy-five years because it is not there." *Romero* v. *International Terminal Operating Co.*, 358 U.S. 354, 370-71 (1959).

3. There is no basis for incorporating NLRA pre-arbitration discovery rules into the RLA.

Neither is the Union's claim advanced by the fact that a right of pre-arbitration discovery has been recognized under the NLRA. Contrary to the Union's suggestion (Pet. 10-12), the right to pre-arbitration discovery under the NLRA is principally based *not* on 29 U.S.C. § 174(a)(1), whose language parallels § 2 First of the RLA, but rather on 29 U.S.C. § 158(a)(5), which requires employers to bargain in good faith with their employees' representatives. See *NLRB* v. *Acme Industrial Co.*, 385 U.S. 432 (1967) (relying solely on § 8(a)(5)). The latter provision has no counterpart in the RLA. Even if the NLRA right to pre-arbitration discovery were based on language identical to § 2 First, however, the Union's argument would fail because it disregards the fundamental differences between the RLA and the NLRA. As the Ninth Circuit recognized below (A. 12), this Court explicitly cautioned in *Chicago & North Western* itself that parallels between § 2 First and the NLRA's duty to

bargain in good faith "should be drawn with the utmost care *and with full awareness of the differences between the statutory schemes.*" 402 U.S. at 579 n.11 (emphasis added). See also, *e.g.*, *Trans International Airlines, Inc.* v. *International Brotherhood of Teamsters*, 650 F.2d 949, 959 (9th Cir. 1980). Here, the fundamental differences between the two statutes defeat the analogy offered by the Union, because the RLA and the NLRA differ in at least four respects that bear directly on the Union's claim for court-ordered pre-arbitration discovery.

First, Section 3 of the RLA, 45 U.S.C. § 153, establishes its own specific procedures for resolving contract disputes, and they do not contemplate pre-arbitration discovery. See p. 4 *supra*. This Court has emphasized that these statutory grievance procedures constitute "a *mandatory, exclusive, and comprehensive* system for resolving grievance disputes." *Brotherhood of Locomotive Engineers* v. *Louisville & Nashville R. Co.*, 373 U.S. 33, 38 (1963) (emphasis added); see also *Gunther* v. *San Diego & A. E. Ry. Co.*, 382 U.S. 257, 263-64 (1965). The NLRA, in contrast, does not contain any similar "comprehensive" set of express grievance resolution procedures. See, *e.g.*, *Gateway Coal Co.* v. *United Mine Workers*, 414 U.S. 368, 374 (1974); *United Steelworkers of America* v. *Warrior & Gulf Nav. Co.*, 363 U.S. 574, 582 (1960). The Union is therefore asking this Court to read the general language of § 2 First of the RLA in derogation of the exclusive authority specifically conferred upon arbitration boards in Section 3 of the RLA. Moreover, it asks this Court to do so by following precedents under a different statute when that statute neither requires arbitration or enunciates arbitration procedures.

Second, as the court below noted (A. 12-13), an essential corollary to the exclusive and comprehensive nature of the arbitration machinery created by Congress in § 3 of the RLA is the extremely restricted role of the courts in the resolution of arbitrable minor disputes. In

this regard, this Court has made it clear that, "[n]ot only has Congress thus designated an agency [*i.e.*, the railroad adjustment board] peculiarly competent to handle [minor disputes] * * *, but * * * it also intended to leave a minimum responsibility to the courts." *Order of Railway Conductors* v. *Pitney*, 326 U.S. 561, 566 (1946). Indeed, "Congress considered it *essential* to keep * * * 'minor' disputes within the Adjustment Board and out of the courts." *Union Pacific R. Co.* v. *Sheehan*, 439 U.S. 89, 94 (1978) (emphasis added). Accordingly, as the Ninth Circuit held below, opening the federal courts for discovery as to matters pending before railroad arbitration boards would be contrary to one of the RLA's central policies:

> "Congress intended the parties to work out disputes themselves, with a minimum of judicial intervention. *See Chicago & North Western*, 402 U.S. at 588-91 (Brennan, J. dissenting); *see also Fechtelkotter* v. *Air Lines Pilots Ass'n*, 693 F.2d 899, 901 (9th Cir. 1982) (citing the Act's 'strong polic[y] in favor of arbitration and against judicial intervention'). [The union's] *interpretation of Section 2 First would place the courts at the heart of the bargaining process whenever either side in a railway labor dispute sought information about the other. We think Congress intended otherwise.*" A. 13 (emphasis added).

Third, the Ninth Circuit also found it "significant that the [RLA] created no administrative board comparable to the [NLRB]." A. 13. This distinction was critical in *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369 (1969), where this Court refused to import NLRA secondary-boycott principles into the RLA in part because "[e]ven if the task of adapting the NLRA's principles to railway disputes could be managed and implemented by an agency with administrative expertise, * * * Congress has invested no agency with even colorable authority to perform this function." 394 U.S. at 391-92. Here, the NLRB has far greater institutional

competence to resolve discovery claims under the NLRA than federal courts would have to resolve comparable claims under the RLA.[5] Indeed, in its only case affirming NLRB-ordered pre-arbitration discovery under the NLRA, this Court stressed that "[t]he relationship of the Board to the arbitration process is of a quite different order" than the relationship of the federal courts to that process. *NLRB* v. *Acme Industrial*, *supra*, 385 U.S. at 436.[6] Thus the *Acme Industrial* case, in and of itself, evidences this Court's hesitancy to have federal courts handle discovery disputes pertaining to arbitral matters over which those courts have no jurisdiction.

Finally, the Union's attempt to equate the RLA and the NLRA ignores § 2 Sixth of the RLA, which expressly provides that "nothing in this chapter [the RLA] shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties." 45 U.S.C. § 152 Sixth. In *Edwards* v. *St. Louis-San Francisco R. Co.*, 361 F.2d 946, 953-54 (7th Cir. 1966), the Seventh Circuit held that § 2 Sixth affords railroads, airlines and their unions the right to create procedures for resolution of minor disputes through the collective bargaining process. (Indeed, as we have shown above,

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[5] When Courts of Appeals are called on to review NLRB decisions concerning the NLRA duty to disclose information, their task is not to decide *de novo* whether § 8(a)(5) has been violated, but solely to decide whether the NLRB's decision is supportable under a "deferential standard of review" in which the NLRB's decision is accorded " 'great weight.' " *Salt River Valley Water Users' Ass'n* v. *NLRB*, 769 F.2d 639, 641-42 (9th Cir. 1985).

[6] As a practical matter, moreover, because many pre-arbitration discovery claims under the NLRA are resolved finally at the administrative level, relatively few such claims reach the courts through actions to enforce or review the NLRB's decisions. Under the RLA, in contrast, no administrative agency will screen the claims for pre-arbitration discovery that will be put forward by unions seeking business information from their members' employers. The courts will thus be forced to bear the full weight of a new body of litigation.

the 1964 Agreement itself represents just such an agreement in that the parties agreed to certain supplemental procedures to assure that each party had necessary information pertaining to a dispute. See pp. 4-5 *supra.*) The NLRA, by contrast, contains no provision comparable to § 2 Sixth.[7] Accordingly, while supplemental grievance procedures under the NLRA must be implied from the statute, the RLA leaves their formulation to the parties.

4. Unions are not prejudiced by a lack of court-ordered pre-arbitration discovery.

The Union's petition is replete with conclusory claims that if pre-arbitration discovery is denied, the Union and other labor organizations in its position will be unable to carry out their statutory duties of representing their members in the RLA grievance process. Those claims are belied by a single fact: it has never been the practice in the railroad industry for unions to seek or for railroads to provide the kind of information sought in this case, and no court in the 54-year history of the RLA has ever held that the RLA entitles unions to such discovery. See pp. 3-4 *supra.* If court-sponsored pre-arbitration discovery were genuinely necessary for the general processing of grievances under § 3 of the RLA, unions would have sought such discovery as a matter of course and courts would have been presented with repeated requests for orders compelling disclosure of information.

Moreover, if the circumstances of a particular collective bargaining agreement make it unusually important for one side to have access to information in the posses-

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[7] Indeed, § 10(a) of the NLRA expressly provides that the NLRB's jurisdiction to sanction unfair labor practices, including the refusal to bargain in good faith, "shall not be affected by any other means of adjustment * * * that has been or may be established by agreement, law, or otherwise * * *." 29 U.S.C. § 160(a).

sion of the other side, the parties are free to bargain for disclosure as part of their overall contractual agreement. See pp. 13-14 *supra*. In this case, as shown above, the parties did provide by contract for limited disclosure obligations in connection with the 1964 Agreement—but not for the kind of disclosure sought by the Union here. See pp. 4-5 *supra*. In demanding pre-arbitration discovery in this case, the Union is asking this Court to rewrite the terms of a bargain that labor and management voluntarily reached almost 25 years ago and have not since disturbed.

Finally, it must be kept in mind that a rule denying pre-arbitration discovery is a two-way street. In some cases, a railroad or an airline will have an interest in discovering information in the possession of the union for use in connection with an upcoming arbitration. In those cases, if the union is not contractually obligated to disclose the information, whatever burden may accrue from not allowing discovery falls on the employer rather than on the union. Thus, even if a rule against pre-arbitration discovery is assumed to create occasional burdens, those burdens by no means fall exclusively on unions.

5. A right to court-ordered discovery for railroad and airline arbitrations would burden the federal courts.

If a right of pre-arbitration discovery is recognized, the principal practical result will not be a righting of supposed wrongs against unions, but instead a wave of burdensome litigation for the courts. During 1981 alone, approximately 31,000 grievances were filed by railroad unions or carriers. (Ex. 162; D.R. 162.) Under the Union's theory, the parties to each of those 31,000 cases would have had the right to make a sweeping demand for confidential information and documents and to seek to enforce that demand in court if discovery were not forthcoming. It is only possible to speculate how many of

those grievances would have resulted in discovery litigation if a right to pre-arbitration discovery were recognized, but a significant percentage of grievances filed with railroads are ultimately pursued all the way through the minor dispute process to decision by a railroad adjustment board, and many of those grievances could reasonably be expected to lead to collateral discovery proceedings in federal court. See, *e.g.*, National Mediation Board, *Forty-Ninth Annual Report* 44-46 (1983) (approximately 6600 minor disputes processed to decision by adjustment boards). And, as noted above, the courts will not enjoy the luxury of having an administrative agency like the NLRB to act as a buffer for the handling of these discovery controversies.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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May 25, 1988

APPENDIX

APPENDIX

The following companies are affiliated with one or more of the respondents, either as corporate subsidiaries, parents, or other corporate affiliates:

Alameda Belt Line
Alton & Southern Railway Company
American Refrigerator Transit Company
Arkansas & Memphis Railway Bridge and Terminal Company
Belt Railway of Chicago
Bitter Creek Coal Company
Brownsville & Matamoros Bridge Company
CMT Ltd.
Calnev Pipe Line Company
Camas Prairie Railroad Company
Central California Traction Company
Champlin Alaska Pipeline Inc.
Champlin Arguello Pipeline, Inc.
Champlin Canada, Ltd.
Champlin Gas Gathering, Inc.
Champlin Gas Pipeline, Inc.
Champlin Gas Processing Company
Champlin International Petroleum Company
Champlin Liquid Pipeline, Inc.
Champlin Marketing, Inc.
Champlin Midcontinent Crude Oil Pipeline, Inc.
Champlin Midcontinent Marketing, Inc.
Champlin Midcontinent Products Pipeline
Champlin Petrochemicals, Inc.
Champlin Petroleum Company
Champlin Pipeline, Inc.
Champlin Refining, Inc.
Champlin Trading Company
Chicago & Western Indiana Railroad Company
Chicago Heights Terminal and Transfer Railroad Company

Delta Finance Company, Ltd.
Denver Union Terminal Railway
Doniphan, Kensett & Searcy Railroad
Elk Mountain Coal Company
Esperanza Pipeline Company
Galveston, Houston and Henderson Railway Company
Hanna Basin Coal Company
Harbor Service Stations, Inc.
Houston Belt & Terminal Railway Company
Kanda Development Company
Kansas City Terminal Railway Company
Longview Switching Company
MKT Exploration Company
MP Equipment Corporation
MP Redevelopment Corporation
Missouri Improvement Company
Missouri Pacific Air Freight, Inc.
Missouri Pacific Corporation
Missouri Pacific Intermodal Transport, Inc.
Missouri Pacific Railroad Company
Missouri Pacific Truck Lines, Inc.
Nueces Pipeline, Inc.
Oakland Terminal Railway
Ogden Union Railway & Depot Company
Oregon Short Line Railroad Company
Overthrust Pipe Line, Inc.
Pacific Subsidiary, Inc.
Pacific Rail System, Inc.
Panola Pipe Line, Inc.
Park Spring, Inc.
Penn Central Corporation
Portland Terminal Railroad Company
Portland Traction Company
Prospect Point Coal Company
Pueblo Union Depot and Railroad Company
Quality Aggregate & Company

R M Leasing Company
Rock Springs Royalty Company
Rocky Mountain Energy Company
Southern Illinois and Missouri Bridge Company
St. Joseph & Grand Island Railway Company
St. Joseph Terminal Railroad Company
Standard Realty and Development Company
Stauffer Chemical Company of Wyoming
Stonegate Park, Inc.
Terminal Industrial Land Company
Terminal Railroad Association of St. Louis
Texas & Missouri Pacific Railroad Company
Texas City Terminal Railway Company
Trailer Train Company
UP Leasing Corporation
UP Sub, Inc.
Union Pacific Corporation
Union Pacific Finance N.V.
Union Pacific Foundation
Union Pacific Freight Services Company
Union Pacific Land Resources Corporation
Union Pacific Resources Corporation
Union Pacific Resources, Ltd.
Unita Development Company
Upland Industrial Development Company
Upland Industries Corporation
Wamsutter Pipeline, Inc.
Wasatch Insurance Limited
Winton Coal Company
WPX Freight System, Inc.